

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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SUMMARY **PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**

March 20, 2008
Glendale, California

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Chair MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., March 20, 2008, in the second floor Council Chambers of the Glendale City Hall in Glendale, California.

ATTENDANCE

Board Members Present

Chairman John MacLeod
Bill Jackson
Jack Kastorff
Steve Rank
Willie Washington

Board Members Absent

Jonathan Frisch, Ph.D.
José Moreno

Board Staff

Marley Hart, Executive Officer
David Beales, Legal Counsel
Conrad Tolson, Senior Engineer
Bernie Osburn, Staff Services Analyst
Chris Witte, Executive Secretary

Division of Occupational Safety and Health

Larry McCune, Principal Safety Engineer

Others present

Lynne Formigli, California Teachers Association
Dan Leacox, Greenberg Traurig
Shauna Boehm, Center for Public Interest Law
Richard Harris, Roofing Contractors Association
Jeff Green, Jeff Green & Associates
Jim Poage, Clear Channel Outdoor
David Kennedy, DDS, International Academy of Oral Medicine & Toxicology
Anita Vasquez Tibau, Consumers for Dental Choice
Allen Sloan, IBEW Local #11
Luis Arida, IBEW Local #11
Kevin Biggers
Rolf Theraldson
Larry Pena, Southern California Edison

Jim Read, High Country Outdoor Advertising
Jerry Hook, Stokes Ladders
Kevin Bland, California Framing Contractors
Kelley Connell, Flexible Lifeline Systems
Abraham O'Connor, O'Connor Ladder Co.
Tina Kulinovich, Federal OSHA

Charles Brown, Consumers for Dental Choice
Josè Esparza, IBEW Local #11
Margaret Agus, City of Glendale
Chester Yokoyama, DDS
Kelly Gallagher, Langenburg Water Co.
Dennis Gregory, CBS Outdoor

Chuck Wigger, Lamar Advertising
Jeffrey Thomas, Clear Channel Outdoor

Victoria DaCosta, Hygiene Wellness
Kevin Thompson, Cal-OSHA Reporter

Carlos Serrano, Lamar Advertising
Elizabeth Treanor, Phylmar Regulatory
Roundtable
Hugh Armstrong, FLS

B. OPENING COMMENTS

Chair MacLeod indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

Chair MacLeod then opened the floor for public comment.

Mr. Charles Brown, National Counsel for the Consumers for Dental Choice, presented a petition for a vertical standard banning the use of mercury in dental work. Mr. Brown stated that mercury is the most volatile and most toxic of the heavy metals. He stated that, according to a magazine survey, 50% of dentists surveyed no longer use mercury fillings. No other health care group endorses the use of mercury except the California Dental Association.

Kevin J. Biggers, former public member of the Dental Board of California, Victoria DaCosta, dental hygienist, Dr. Rolf Theraldsen of Norway, and Anita Vasquez Tibau, on behalf of honorary petitioner Debbie Seltenreich, all spoke in support of Mr. Brown's petition.

Jeff Green, owner and operator of Jeff Green & Associates consulting firm, presented a second petition for a vertical standard addressing measures to protect dental employees from mercury exposure.

Dr. David Kennedy, DDS, of the International Academy of Oral Medicine & Toxicology, spoke in support of Mr. Green's petition, stating that the manufacturer's instructions for mercury amalgam fillings indicate that the vapors should not be inhaled, the capsules should not be reused, and that suitable protective eyewear, clothing, masks, gloves, and wherever possible, barrier techniques such as rubber dam and vacuum, should be used to prevent the vapor from getting on the skin, in the eyes, or inhaled. Dr. Kennedy stated that, in many cases, these protective measures are not taken. He stated that the federal OSHA standard for mercury is a time-weighted average of 50 parts per million (ppm) and the NIOSH standard is 25 ppm. Both standards were based on adult males working in chloralkali plants, and the toxic reaction sought was tremor. He stated that there is a significant difference between the effect of mercury vapor on a developing fetus and tremor in an adult male who has been exposed to mercury 40 hours a week for ten years. He referenced a case-controlled study performed in California which showed a 40% decline in the ability of a female dental assistant to conceive a child if she worked in an office that used amalgam. He further stated that a filtering mask was necessary as opposed to a cloth surgical mask, as the cloth surgical mask was ineffective against mercury vapors and actually makes the exposure worse.

Mr. Kastorff stated that he could understand how a cloth mask may not help, but he was unable to understand how it could make the exposure worse.

Dr. Kennedy explained that working on a tooth with a mercury amalgam filling creates an aerosol of mercury droplets, and the droplets that are too big to go through the mask become lodged in the mask. The breath of the operator then heats up the droplets so they continue to effervesce throughout the day, whereas if the operator were wearing a filter mask that blocked the mercury, there would not be a continual exposure.

Chair MacLeod asked about the effect on patients who have had mercury fillings for a number of years.

Dr. Kennedy responded that mercury does not affect everyone equally. He stated that, aside from pregnant women, there are at least two specific genotypes that have been linked to harm from mercury, and the percentage of the population that possesses these two genotypes is very small.

Dr. Chester Yokoyama, DDS, and Dr. George Chicard, DDS, all spoke in support of Mr. Green's petition.

Chair MacLeod asked Dr. Yokoyama if there were any state dental associations that have recommended a ban on mercury in any of the 50 states. Dr. Yokoyama responded that, on the contrary, the dental associations in the United States still maintain that amalgam is safe.

Mr. Kastorff asked Dr. Yokoyama about the price difference between mercury amalgam fillings and other filling materials. Dr. Yokoyama responded that composite materials are approximately 25% more expensive than amalgam.

Mr. Washington asked Dr. Chicard if the dental schools in California are still advocating the use of amalgam. Dr. Chicard responded positively. Dr. Kennedy stated that in order for dental students to become licensed dentists, they must perform an amalgam filling.

All of the speakers at the public meeting offered to be of any assistance needed during the petition evaluation process.

C. ADJOURNMENT

With no further comments, Chair MacLeod adjourned the Public Meeting at 11:08 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEM

Chair MacLeod called the Public Hearing of the Board to order at 11:08 a.m., March 20, 2008, in the second floor Council Chambers of the Glendale City Hall in Glendale, California.

Chair MacLeod opened the Public Hearing and introduced the item noticed for public hearing.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 11
Sections 3412, 3413, 3414, and 3416
Outdoor Advertising Structures—Fall Protection

Mr. Tolson summarized the history and purpose of the proposal and indicated that the package is now ready for public comment and the Board's consideration.

Chuck Wigger of Lamar advertising asked for clarification of Section 3416(c)(1), regarding a horizontal lifeline, stating that he was unsure of where the horizontal safety line would be anchored. Mr. Tolson responded that the horizontal safety line is to be "so located that employees can attach their fall arrest harness lanyard." Mr. Tolson responded that that was one of two options offered in the section.

Jim Read of High Country Outdoor Advertising disputed the language in the proposed standard that the use of a horizontal lifeline is an industry standard, stating that it has never been a practice in the industry to have a cable on the top forward portion of the billboard.

Mr. Beales suggested to the Chair that it would be helpful to the staff if the Chair would consider asking Mr. Wigger and Mr. Read whether they are suggesting any specific changes in the wording of the proposal.

Mr. Wigger responded that he was not asking for any changes to the proposal, as there is an exception in the standard that references his concerns. He stated that he was unsure of the source of the other information in the standard.

Chair MacLeod responded that a question for the staff might be, "how did the horizontal line get included in the standard to begin with."

Mr. Tolson responded that the language was already in Section 3416. Mr. Read then stated that he participated in the 1991 advisory committee regarding outdoor advertising structures. He expressed his belief that its presence in the standard was a mistake, and that everyone in the outdoor advertising industry missed it at the time. He stated that it is common practice to have a horizontal, permanently attached cable on the deck of the billboard, but never on the top of the poster panel as stated in the existing standard.

Mr. Wigger then submitted proposed language from Werner Ladder Company to be added to the proposal.

Mr. Read submitted photos to show the placement of the attachment points on the ladders.

Chair MacLeod asked whether Mr. Read was suggesting that these attachments be included in the regulation, and Mr. Read responded positively.

Chair MacLeod then asked whether Mr. Read had language to that effect, and Mr. Read responded negatively, stating that the language was included in the statement from Werner submitted by Mr. Wigger.

Mr. Washington stated that the minutes of the advisory committee meeting state that "Mr. McCune questioned what type of material to use on a horizontal lifeline according to Section 3416(c)(2)," and that Mr. Bell stated that "Section 3416(c)(2) is not intended to place dependence on the lifeline because it is intended to provide safe access to the ladder." Mr. Washington stated that he was unsure whether he understands how these two comments relate to Mr. Read's comments.

Mr. Read responded that he had not taken part in the advisory committee meeting and that he was unsure of the meaning of Mr. McCune's and Mr. Bell's comments. He stated, however, that if the proposal is adopted as currently written that the actual attachment points that are built in by the ladder manufacturer are not included. He stated that these attachment points are fairly new, and the aluminum ladders manufactured prior to 1993, which are "grandfathered in," do not have them. In that case, the requirements in the existing standard(?) apply; i.e.: "A ¼ inch improved plow steel cable, 19 inches in length, with four-inch swagged loops on each end. The steel cable shall be looped through the special purpose hooked ladder with the lanyard's snap hook attached to both loops of the cable. Other locking connectors of equivalent strength, such as carabiners, may be used in lieu of the ¼ inch improved plow steel cable."

Mr. Rank commented that the proposal should not rule out any type of effective personal fall arrest systems or positioning devices that could be available "just like a tool in a toolbox."

Mr. Read responded that there is nothing on the outdoor advertising structure that would accommodate a wall hook or a wall chain. He stated that the I-beams of the billboard are set-in approximately six feet from the end of the billboard, and the I-beams are the only approved method at this time to come within the fall protection weight limit.

Mr. Rank commented that the definition in Section 3416(b) only referenced a safety factor of two, as opposed to the complete definition, which includes a 5000 pound per person anchorage point or a safety factor of two. He suggested that, for the sake of clarity, the full definition be included in the proposal.

Mr. Jackson commented that it appeared that the goal of the proposal was to eliminate the use of body belts for fall arrest purpose for working on billboards; however, the proposed changes had unintended consequences. He suggested that the proposal be sent back to staff, who could then present it for stakeholder review.

Mr. Read commented that he would make himself available for such a review.

After further discussion among the Board members, Mr. Tolson, Mr. Beales, and Ms. Hart, the Board directed that the written comment period be extended until 5:00 p.m. on April 3, 2008. Mr. Jackson suggested that staff solicit input from ladder manufacturers, as well.

B. ADJOURNMENT

Chair MacLeod adjourned the Public Hearing at 11:50 a.m.

III. BUSINESS MEETING

Chair MacLeod called the Business Meeting of the Board to order at 11:50 a.m., March 20, 2008, in the second floor Council Chambers of the Glendale City Hall in Glendale, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **LOW-VOLTAGE ELECTRICAL SAFETY ORDERS**
Chapter 4, Subchapter 5
Electrical Safety Orders, Group 1
Low-Voltage Electrical Safety Orders
(Heard at the January 17, 2008, Public Hearing)

Mr. Tolson summarized the history and purpose of the proposal, noting that modifications had been made at the suggestion of Federal OSHA, Region IX. He indicated that the package is now ready for adoption.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Washington that the Board adopt the proposed safety order.

Chair MacLeod thanked Mr. Tolson for his work on the package, noting that it had been quite involved.

A roll call was taken, and all members present voted “aye.” The motion passed.

2. TITLE 8: **MINE SAFETY ORDERS**
Chapter 4, Subchapter 17, Article 17
Section 7016
Brakes on Haulage Vehicles—Maintenance
(Heard at the December 13, 2007, Public Hearing)

Mr. Tolson summarized the history and purpose of the proposal, stating that there had been two written comments in response to the 45-day Notice, one of which resulted in further modification of the proposal. He indicated that the package is now ready for adoption.

MOTION

A motion was made by Mr. Kastorff and seconded by Mr. Washington that the Board adopt the proposed safety order.

A roll call was taken, and all members present voted “aye.” The motion passed.

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

Mr. Beales summarized the 12 proposed variance decisions for adoption and asked that the Board approve the consent calendar and thereby adopt the proposed decisions as written.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Rank to adopt the consent calendar as

proposed.

A roll call was taken, and all members present voted "aye." The motion passed.

C. OTHER

1. Legislative Update

Mr. Beales stated that, in addition to the written update already included in the Board packets, AB 2689, by Assembly Member Tran, regarding the nail care industry and the fact that a large percentage of the workers in that industry speak Vietnamese as their first, primary, or sole language was brought to Board staff's attention by the Division. The bill would require that MSDS sheets relevant to the nail care industry be translated into Vietnamese, and to the extent required by this bill, be available to Vietnamese-speaking nail care workers.

2. Executive Officer's Report

Ms. Hart followed up on her January briefing regarding the budget situation, stating that on February 19, Governor Schwarzenegger issued an Executive Order for fiscal year 07-08 ordering that agency secretaries and department directors take immediate action to reduce the current fiscal year expenditures by 1.5%. This reduction is intended to achieve a General Fund savings of approximately \$100 million this fiscal year.

The reduction dollar amount for the Standards Board has not been determined and no specific dollar amount has been provided by the Budget Office. However, all the reductions to be made are to be made to non-essential and non-mission-critical activities and "shall not negatively impact public safety or public health activities." The suggested areas to be targeted are a freeze on hiring; reducing, cancelling, disencumbering, or postponing contracts or agreements to lease or purchase equipment; reducing, cancelling, disencumbering, or postponing other contracts or agreements, including those for personal services and media and outreach campaigns; and reducing travel costs by cancelling or postponing discretionary travel.

The Standards Board has two staff positions that are not being filled in order to comply with the Governor's mandate—a staff services manager position and an industrial hygienist position. Staff has also limited expenditures considerably and is examining what can be done to conserve or possibly reduce travel expenditures. The current impact of these measures is primarily on the workload and what staff is capable of producing at this time, and staff continues to be very diligent in managing resources.

Ms. Hart noted that the Board is able to meet the 1.5% reduction and is able to have a savings this year, so the required reduction should not negatively impact the Board. Any necessary purchases are no longer being restricted, and the \$3,000 expenditure limitation and the requirement to obtain approvals for expenditures have been lifted. There are new procedures in place that allow staff to move forward with necessary purchases.

Ms. Hart then summarized the Calendar of Activities.

Mr. Jackson noted that on March 11 and again on April 8, the Division is conducting advisory committees to consider proposed amendments to the Tunnel Safety Orders, and he asked whether all of the proposed amendments had come from the Division.

Ms. Hart responded negatively and stated that Steve Hart is chairing those advisory committee meetings, of which there have been four slated to occur. The first was on March 11, and Mike Manieri represented Board staff at that meeting. Mr. Manieri has discussed at least three issues with the Division staff that pose concern for the Board staff and asked that the issues be included in the advisory committee discussions.

Mr. Jackson asked whether the Division has a proposal regarding these matters, and Ms. Hart responded positively. Mr. Jackson asked for a briefing on that proposal and indicated his concern about having the enforcement agency draft the rules it enforces.

Ms. Hart responded that staff would provide that information to Mr. Jackson, and she indicated that the focus of the advisory committee meeting was on the Labor Code and ensuring that the Division does not take liberties to which they are not entitled.

Mr. Rank asked who from the Division had supported the proposed amendments to Sections 1509 and 3203, which had been denied.

Ms. Hart responded that Larry McCune and Patrick Bell had been present at the advisory committee meetings and had commented. Reports of injuries and fatalities from the National Institute for Occupational Safety and Health were distributed and discussed but they did not move the advisory committee to take action.

Mr. Rank asked whether Mr. McCune and Mr. Bell had wanted to pursue regulations on statistics that were above and beyond Sections 1509 and 3203.

Ms. Hart responded that they wanted certain areas barricaded and wanted crane operators to give permission for people to enter into the danger zone. The advisory committee did not find necessity, and the issues were easily resolved.

Ms. Hart reminded the Board members that if they had not already submitted their Form 700 Statement of Economic Interest, they are due at this time.

Chair MacLeod asked about the PEL advisory committee meetings to be held.

Ms. Hart responded that there is one scheduled for April 4 and one on April 29. She stated that she had informed the Cal OSHA Advisory Committee members and the Division that the Board is following the PEL advisory committee meetings very closely and that the Board would be asking for updates on the progress made on a regular basis.

Chair MacLeod asked why those meetings are not listed on the Board's Calendar of Activities.

Ms. Hart responded that she was uncertain of the reason, but that it would be a simple matter to add those meetings to the Board's Calendar of Activities.

3. Future Agenda Items

Mr. Jackson stated that in the current limited economic climate, he was unsure if this appropriate, but the same part of the Labor Code that directs the Board to review the Tunnel Safety Orders every two years also directs the Board to review and update the Mine Safety Orders every two years, and he again expressed concern about having the the Division draft the proposed standards.

Chair MacLeod responded that the Board is not staffed to do that work, and he stated that there is a Memorandum of Understanding directing the Division to perform much of that work.

Mr. Jackson expressed further concern that some of the mining regulations are so outdated that they are no longer enforceable.

Chair MacLeod asked for a future update on the budgetary impact on staffing, as well as the workload because it does not appear that it is going to get better. He expressed his concern for how the Board is going to deal with long-term budget shortages.

F. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 12:15 p.m.